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Attorneys for Bank of America, N.A., and  
Wells Fargo Bank, National Association

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**COUNTY OF MULTNOMAH,**

Plaintiff,

v.

**MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.**, a  
Delaware corporation; **MERSCORP  
HOLDINGS, INC.**, previously **MERSCORP.,  
INC.**; **BANK OF AMERICA, N.A., dba  
BANC OF AMERICA INVESTMENT  
SERVICES, INC.**, a Florida corporation;  
**JPMORGAN CHASE BANK, N.A.**, a  
Delaware corporation; **CITIMORTGAGE,  
INC.**, a New York corporation; **EVERBANK  
MORTGAGE COMPANY**, a division of  
**EVERBANK**, a Florida corporation;  
**SUNTRUST MORTGAGE, INC.**, a Virginia  
corporation; **WELLS FARGO BANK,  
NATIONAL ASSOCIATION**, a foreign  
corporation; **WMC MORTGAGE  
CORPORATION**, a California corporation;  
**CITIZENS BANCORP, dba CITIZENS**

Case No. 3:15-cv-01246-PK

DECLARATION OF BRIAN T. KIOLBASA  
IN SUPPORT OF DEFENDANTS' REPLY  
BRIEFS IN SUPPORT OF THEIR MOTIONS  
FOR SUMMARY JUDGMENT

PAGE 1 - DECLARATION OF BRIAN T. KIOLBASA IN SUPPORT OF DEFENDANTS'  
REPLY BRIEFS IN SUPPORT OF THEIR MOTIONS FOR SUMMARY  
JUDGMENT

**BANK**, an Oregon corporation; and **WEST COAST BANCORP**, dba **WEST COAST BANK**, an Oregon corporation; and **U.S. BANK NATIONAL ASSOCIATION**, an Ohio corporation,

Defendants.

**MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.**,

Defendant/Counterclaim-Plaintiff,

v.

**COUNTY OF MULTNOMAH**,

Plaintiff/Counterclaim-Defendant,

and

**FEDERAL HOME LOAN MORTGAGE CORPORATION**,

and

**FEDERAL NATIONAL MORTGAGE ASSOCIATION**,

Counterclaim-Defendants.

I, Brian T. Kiolbasa, declare and state as follows:

1. I am a member at Lane Powell PC and one of the attorneys for defendants Bank of America, N.A. (“BANA”), and Wells Fargo Bank, N.A. (“Wells Fargo”). I make this declaration based on my own personal knowledge and in support of the following summary judgment reply briefs filed by defendants in this action:

- Reply Brief In Support of Defendants’ Motions for Summary Judgment on (1) *Ultra Vires* Lawsuit, (2) County’s Conduct, (3) No Damages, (4) Claims I-VI, (5) Declaratory and Injunctive Relief, and (6) Punitive Damages;
- Reply Brief In Support of Defendants Bank of America, N.A. and Wells Fargo Bank, N.A.’s Partial Motion for Summary Judgment – Vicarious Liability;

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REPLY BRIEFS IN SUPPORT OF THEIR MOTIONS FOR SUMMARY  
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- Defendant Wells Fargo Bank, N.A.'s Reply in Support of its Motion for Summary Judgment on All Claims.

2. Attached hereto as Exhibit 64 is a true and correct copy of excerpts from the transcript of the deposition of Jeff Sageser, testifying on behalf of Deschutes County, Oregon, which took place on May 22, 2015.

3. Attached hereto as Exhibit 65 is a true and correct copy of excerpts from the transcript of the deposition of Ralph Marle Hoehne, testifying on behalf of Lane County, Oregon, which took place on June 11, 2015.

4. Attached hereto as Exhibit 66 is a true and correct copy of excerpts from the transcript of the deposition of Tassi O'Neil, testifying on behalf of the Oregon Association of County Clerks, which took place on May 29, 2015.

5. Attached hereto as Exhibit 67 is a true and correct copy of excerpts from the transcript of the deposition of Brenda Giesselmann, testifying on behalf of Wells Fargo Bank, N.A., which took place on March 25, 2015.

6. Attached hereto as Exhibit 68 is a true and correct copy of a General Judgment of Foreclosure issued in *Wells Fargo Bank, NA v. Bratcher et al.*, Multnomah County Circuit Court Case No. 1209-11175.

7. Attached hereto as Exhibit 69 is a true and correct copy of a Stipulated General Judgment of Foreclosure issued in *Wells Fargo Bank, NA v. Beard et al.*, Multnomah County Circuit Court Case No. 1207-08910.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED: July 9, 2015

/s/ Brian T. Kiolbasa

Brian T. Kiolbasa

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**JEFF SAGESER VOLUME I  
MULTNOMAH VS. MORTGAGE ELECTRONIC**

**May 22, 2015  
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<p style="text-align: right;">Page 1</p> <p>IN THE CIRCUIT COURT OF THE STATE OF OREGON</p> <p>IN AND FOR THE COUNTY OF MULTNOMAH</p> <p>COUNTY OF MULTNOMAH, )</p> <p>Plaintiff, )</p> <p>v. ) No.1212-16328</p> <p>MORTGAGE ELECTRONIC ) Volume 1</p> <p>REGISTRATION SYSTEMS, INC., ) Pages 1-99</p> <p>et al., )</p> <p>Defendants. )</p> <p>DEPOSITION OF JEFF SAGESER</p> <p>May 22nd, 2015</p> <p>Friday</p> <p>9:08 A.M.</p> <p>THE VIDEOTAPED DEPOSITION OF JEFF SAGESER</p> <p>was taken at Deschutes County Offices, 1300 NW Wall</p> <p>Street, 2nd Floor, Bend, Oregon, before Deborah M.</p> <p>Bonds, CSR-RPR, Certified Shorthand Reporter in and</p> <p>for the State of Oregon.</p>	<p style="text-align: right;">Page 3</p> <p>(continued)</p> <p>For Defendants U.S. Bank National Association:</p> <p>DORSEY &amp; WHITNEY LLP</p> <p>701 5th Avenue, Suite 6100</p> <p>Seattle, Washington 98104</p> <p>206/903-8870</p> <p>BY: AMY STERNER NELSON (via phone)</p> <p>sterner.amy@dorsey.com</p> <p>For Defendants WMC Mortgage and JP Mortgage Chase</p> <p>Bank, NA:</p> <p>BUCKLEY SANDLER, LLP</p> <p>1250 24th Street NW, Suite 700</p> <p>Washington, DC 20037</p> <p>202/349-8061</p> <p>BY: ANDREW R. LOUIS (via phone)</p> <p>Also Present:</p> <p>ROBIN CASSIDY-DURAN, VIDEOGRAPHER</p> <p>MADOLYN CRUMPTON (via phone)</p> <p>Reported by:</p> <p>DEBORAH M. BONDS, CSR-RPR</p> <p>CC REPORTING &amp; VIDEOCONFERENCING</p> <p>EUGENE 541/485-0111</p>
<p style="text-align: right;">Page 2</p> <p>APPEARANCES</p> <p>For the Witness:</p> <p>Deschutes County Legal Counsel</p> <p>1300 NW Wall Street, Suite 205</p> <p>Bend, Oregon 97701</p> <p>541/388-6625</p> <p>BY: DAVID DOYLE</p> <p>david.doyle@deschutes.org</p> <p>For Plaintiff County of Multnomah:</p> <p>D'AMORE LAW GROUP</p> <p>4230 Galewood Street, Suite 200</p> <p>Lake Oswego, Oregon 97035</p> <p>503/222-6333</p> <p>BY: NICK KAHL</p> <p>nick@damorelaw.com</p> <p>For Defendants Bank of America and Wells Fargo:</p> <p>LANE POWELL PC</p> <p>601 SW 2nd Avenue, Suite 2100</p> <p>Portland, Oregon 97204</p> <p>503/778-2100</p> <p>BY: PILAR FRENCH</p> <p>frenchp@lanepowell.com</p> <p>For Defendants MERS and MERSCORP:</p> <p>DAVIS WRIGHT TREMAINE</p> <p>1300 SW Fifth Avenue, Suite 2400</p> <p>Portland, Oregon 97201</p> <p>503/778-5328</p> <p>BY: GREGORY A. CHAIMOV</p> <p>gregorychaimov@dwtd.com</p> <p style="text-align: right;">(continued)</p>	<p style="text-align: right;">Page 4</p> <p>INDEX</p> <p>WITNESS.....PAGE</p> <p>JEFF SAGESER</p> <p>BY MS. FRENCH 7,211</p> <p>BY MR. CHAIMOV 195</p> <p>BY MR. KAHL 198</p> <p>EXHIBITS.....PAGE</p> <p>No. 1 Letter and deposition subpoena 10</p> <p>No. 2 Deed of trust 87</p> <p>No. 3 Email string 148</p> <p>No. 4 Article 153</p> <p>No. 5 Bend Bulletin article 155</p> <p>No. 6 Email string 156</p> <p>No. 7 Email, 11/19/12 158</p> <p>No. 8 Email string 159</p> <p>No. 9 Document re: MERS 160</p> <p>No. 10 Email with MERS statistics 162</p> <p>No. 11 Trust deeds with MERS chart 166</p> <p>No. 12 MERS talking points 167</p> <p>No. 13 MERS talking points final 174</p> <p style="text-align: right;">(continued)</p>



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<p style="text-align: right;">Page 25</p> <p>1 And I'm just generally speaking here. We</p> <p>2 will look to see whether or not it's -- if it's</p> <p>3 legible for us to capture and then reproduce for the</p> <p>4 public. We will look to see whether or not there</p> <p>5 are adequate fees for accepting the document for</p> <p>6 recording.</p> <p>7 Q. You mentioned that there was a document</p> <p>8 submitted in connection with a nonjudicial</p> <p>9 foreclosure pertaining to proofs of service. Is</p> <p>10 that correct?</p> <p>11 A. No. Affidavit of service.</p> <p>12 Q. Okay. There's -- okay. So there's a</p> <p>13 document submitted for recording in connection with</p> <p>14 a nonjudicial foreclosure which consists of an</p> <p>15 affidavit of service.</p> <p>16 A. Yes.</p> <p>17 Q. Do you review that document to confirm</p> <p>18 that service has actually been --</p> <p>19 A. No.</p> <p>20 Q. -- affected on everyone?</p> <p>21 A. No.</p> <p>22 Q. What you're looking for is different. You</p> <p>23 have a list of things that you're looking for.</p> <p>24 Right?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 27</p> <p>1 Q. Okay.</p> <p>2 A. So the index is rather incomplete.</p> <p>3 Q. So I was -- actually, I think I saw</p> <p>4 something in the documents about the autoindexing.</p> <p>5 Can you tell me what that is?</p> <p>6 A. Autoindexing is software that our vendor</p> <p>7 makes available to counties using their recording</p> <p>8 system that takes a document, OCR's it, in other</p> <p>9 words, it will scan it for searchable text, and it</p> <p>10 will apply a set of rules to the text that it finds</p> <p>11 and probably uses some fancy algorithms to find out</p> <p>12 how close or approximate names are to descriptive --</p> <p>13 other descriptive words to extract an index to be</p> <p>14 placed in the clerk's searchable index.</p> <p>15 Q. What -- let's shift to a deed of trust, so</p> <p>16 you can tell me what these descriptive words are</p> <p>17 that the software looks for.</p> <p>18 A. It will look for -- primarily what we're</p> <p>19 doing is populating an index, a direct and indirect</p> <p>20 index. I believe the statute refers to them as</p> <p>21 grantors and grantees. And the -- the deed of</p> <p>22 trust, I would -- I haven't seen the set of rules,</p> <p>23 but it will look for the words "beneficiary," and it</p> <p>24 will look for the words "lender." It will look for</p> <p>25 the words "borrower," "grantor," "grantee." And</p>
<p style="text-align: right;">Page 26</p> <p>1 Q. You're not examining -- you're not</p> <p>2 examining that document and confirming that what it</p> <p>3 says actually happened.</p> <p>4 A. That's correct.</p> <p>5 Q. You are checking to make sure you've got a</p> <p>6 signature, that it's notarized and acknowledged,</p> <p>7 that it's legible, and that it's recordable. Is</p> <p>8 that correct?</p> <p>9 A. Reproducible. Eligibility turns into</p> <p>10 reproducibility and don't forget the fees.</p> <p>11 Q. And fees. Okay. And when you get</p> <p>12 something like an affidavit of service for a</p> <p>13 nonjudicial foreclosure, do you index it?</p> <p>14 A. I typically don't, but our recorders do.</p> <p>15 Q. Okay.</p> <p>16 A. Our office does.</p> <p>17 Q. Okay.</p> <p>18 A. One of our recorders does. Let me just</p> <p>19 also jump in. I will mention that Deschutes County</p> <p>20 is unique in the sense that we have a program</p> <p>21 through our software vendor, Helion, we have</p> <p>22 autoindexing.</p> <p>23 Q. I was going to ask you about that.</p> <p>24 A. And I would have to say that the rules</p> <p>25 that have been set up don't favor affidavits.</p>	<p style="text-align: right;">Page 28</p> <p>1 there may be some others as well, but I would say</p> <p>2 that that's probably most of it.</p> <p>3 Q. How long have you been doing -- how long</p> <p>4 has Deschutes County been autoindexing?</p> <p>5 A. Autoindexing, I'm guessing -- Oh, boy.</p> <p>6 Good question. It's been more than about seven</p> <p>7 years.</p> <p>8 Q. Are you one of the only counties that does</p> <p>9 that?</p> <p>10 A. I believe so.</p> <p>11 Q. Is the trustee indexed?</p> <p>12 A. It is not. The trustee for a deed of</p> <p>13 trust, we do not index the trustee.</p> <p>14 Q. Why is that, if you know?</p> <p>15 A. It's more of a historical practice, and so</p> <p>16 I wouldn't recall why it would have ever been not</p> <p>17 indexed.</p> <p>18 Q. Okay. Is the purpose of the indexing to</p> <p>19 identify the parties to the trust deed?</p> <p>20 A. I would say that's part of it, and more so</p> <p>21 that it's locatable and searchable by the public.</p> <p>22 Q. Okay. So you don't -- the index -- the</p> <p>23 purpose of the -- tell me what -- you tell me what</p> <p>24 the purpose of indexing is.</p> <p>25 A. For our office and -- well, the purpose of</p>

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<p style="text-align: right;">Page 29</p> <p>1 the index is to help locate a public record. I 2 liken it -- when I've been trying to explain to 3 others, I would use the analogy: If you were to go 4 into a library and you were to try to locate a 5 book -- 6 Q. Uh-huh. 7 A. -- and you went up to a librarian and 8 said, "Where is this book?" They may not know, but 9 they have a tool to use, and that tool would be a 10 card catalog reader -- for those that are of the old 11 school. And they would locate that card catalog 12 reader, pull out the index card, and there would be 13 a notation of where they could locate that document. 14 So that's the purpose of the index. 15 Q. Okay. And so as long as the index can 16 tell you where to obtain the record, the index is 17 sound. 18 MR. KAHL: Objection -- 19 A. I wouldn't -- 20 BY MS. FRENCH: 21 Q. Go ahead. You can -- he's going to -- 22 he's going to object every now and then when he 23 doesn't like the wording of a question, but you can 24 go ahead and answer. 25 A. Could rephrase the -- or repeat the</p>	<p style="text-align: right;">Page 31</p> <p>1 Q. So if they need to look at something, it 2 -- well, strike that. 3 What's the purpose of having it on hand? 4 A. I'm sorry. Repeat that? 5 Q. What is the purpose of having that statute 6 on hand? 7 A. So we can follow the guidance that the 8 legislature has provided us. 9 Q. Okay. So I'm looking at ORS 205.160 -- 10 A. Let me just mention one additional thing. 11 The Chapter 205 are the duties of the county clerk. 12 So under 205, we would presume that there's guidance 13 for us to follow in carrying out our assignments, if 14 you will. 15 Q. Okay. And I'm looking at 205.106 [sic] -- 16 you've read this statute before? 17 A. I have. 18 MR. DOYLE: 160? 19 MS. FRENCH: 205.160? 20 MR. DOYLE: Yeah. You said 106 -- 21 MS. FRENCH: Oh, I'm sorry. 22 MR. DOYLE: -- so I just wanted to 23 make sure we had the right one. 24 MS. FRENCH: I'm going to do that a 25 few times today.</p>
<p style="text-align: right;">Page 30</p> <p>1 question for me, please? 2 Q. Well, I'm just trying to understand the 3 purpose of the index. The index is to locate public 4 records and you, being Deschutes County, with Helion 5 autoindex and retrieve certain pieces of information 6 from the original document that's being recorded, 7 whatever that is, so that you can then later find 8 it. Right? If somebody wants to see it. Correct? 9 A. Correct. 10 Q. But you may not have every key piece of 11 information in the index that is actually contained 12 in the document. It's just enough so that you can 13 find it. Right? 14 A. We follow ORS 205.160 in populating our 15 index. 16 Q. And that statute tells you what to index? 17 A. Correct. 18 Q. And is that the statute that speaks in 19 terms of direct and indirect parties? 20 A. It does. 21 Q. Do you have a copy of that -- does -- 22 strike that. 23 Do the clerk's have a copy of that statute 24 on hand? 25 A. Yes.</p>	<p style="text-align: right;">Page 32</p> <p>1 BY MS. FRENCH: 2 Q. Subsection 1 says (reading): The 3 county clerk shall keep a direct general 4 index and an indirect general index in the 5 office of the clerk. 6 Can you tell me what the difference is 7 between a general index and an indirect general 8 index? 9 A. Well, if it might be helpful, we do look 10 at Section 7 in following because it does mention 11 that in lieu of the direct -- excuse me -- general 12 indirect and direct, if a county uses, believe it or 13 not, a data processing system, which we do use, then 14 that is the method or the process that we follow. 15 So I believe that it's 7 -- subsection 7 under 160 16 that we follow. 17 Q. Okay. And so Subsection 7 -- I'll read it 18 to you just so that we're all talking about the same 19 thing -- I'm sorry. I don't have a copy. 20 MR. DOYLE: I have a copy here. 21 MS. FRENCH: Oh, okay. Well, if he 22 wants to look at one, that's fine with me. 23 BY MS. FRENCH: 24 Q. (Reading): In lieu of both the 25 direct and -- you've pretty much quoted it</p>

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<p style="text-align: right;">Page 73</p> <p>1 it's available in a bookcase in paper form if it --</p> <p>2 if we don't have access to our computers so --</p> <p>3 Q. Do you have weekly meetings or staff</p> <p>4 meetings or anything like that?</p> <p>5 A. We have monthly meetings, uh-huh.</p> <p>6 Q. Okay. And during those monthly meetings,</p> <p>7 have you ever discussed MERS?</p> <p>8 A. I believe when the two Supreme Court cases</p> <p>9 were decided, I believe there was a conversation</p> <p>10 about the Supremes kind of decided on two cases that</p> <p>11 were involving MERS, and we haven't really done too</p> <p>12 much to change anything in our practices. And I did</p> <p>13 also share, I believe, at one meeting that I was</p> <p>14 going to conference and sharing some information</p> <p>15 about that.</p> <p>16 Q. Okay. And what is it -- I know you've</p> <p>17 monitored this Brandrup and Niday -- these cases --</p> <p>18 but what does the county do to monitor the law with</p> <p>19 regard to recording issues? Is there any special</p> <p>20 protocol?</p> <p>21 A. No, there isn't. I would find it</p> <p>22 helpful -- several years ago external auditors would</p> <p>23 come in and see how we assessed fees and whether</p> <p>24 those were collected and appropriated to the right</p> <p>25 agencies, but that hasn't happened for some time.</p>	<p style="text-align: right;">Page 75</p> <p>1 property -- I need to record it. Right?</p> <p>2 MR. KAHL: I'm going to object that it</p> <p>3 calls for a legal conclusion.</p> <p>4 A. I wouldn't --</p> <p>5 BY MS. FRENCH:</p> <p>6 Q. You can answer, if you know.</p> <p>7 A. Yeah. I wouldn't be able to answer that</p> <p>8 question.</p> <p>9 Q. Okay. You don't know what the purpose of</p> <p>10 recording a trust deed is?</p> <p>11 A. I do.</p> <p>12 Q. What is the purpose?</p> <p>13 A. I would say for the clerk's office, the</p> <p>14 purpose for -- and I'm just speaking within the</p> <p>15 duties of the county clerk -- is to preserve the</p> <p>16 permanent record, make those records available for</p> <p>17 public inspection.</p> <p>18 Q. But do you --</p> <p>19 A. I would -- I would only presume that there</p> <p>20 are other purposes that other people could speak to.</p> <p>21 Q. So you don't know what the purpose of</p> <p>22 recording a trust deed is?</p> <p>23 MR. KAHL: I'm going to object. It's</p> <p>24 asked and answered.</p> <p>25 MS. FRENCH: I just want to confirm</p>
<p style="text-align: right;">Page 74</p> <p>1 Q. So talk -- speaking about the fees, how</p> <p>2 are the fees allocated?</p> <p>3 A. The fees -- the recording fees are</p> <p>4 collected -- I'll just say that the clerk's office</p> <p>5 will get basically \$5 per page of a document to</p> <p>6 record. The additional fees that would be collected</p> <p>7 will be for affordable housing; will be for a corner</p> <p>8 preservation, a surveyor's fee; assessment and</p> <p>9 taxation, which goes to state, and some is returned.</p> <p>10 A portion of the recorder's fee, the \$5,</p> <p>11 there's a 5 percent fee that is dedicated for record</p> <p>12 preservation, technology, upgrading of the software,</p> <p>13 storage -- you know, purchase of storage cabinets,</p> <p>14 whatever the clerk may need, so there's a dedicated</p> <p>15 fee that's associated with the \$5 so --</p> <p>16 Q. So the fees are for providing the public</p> <p>17 service of recording?</p> <p>18 A. The clerk's office fee is associated --</p> <p>19 yeah.</p> <p>20 Q. Okay.</p> <p>21 A. I can only speak to that.</p> <p>22 Q. Okay. And if somebody -- if I have a</p> <p>23 trust deed -- if I have a deed of trust, and I want</p> <p>24 to make sure I have priority, that I stay first in</p> <p>25 line -- nobody else is loaned against the</p>	<p style="text-align: right;">Page 76</p> <p>1 I'm understanding.</p> <p>2 MR. DOYLE: Do you understand the</p> <p>3 question?</p> <p>4 A. The purpose of a trust deed to be recorded</p> <p>5 is to -- well, some may say to perfect the document</p> <p>6 and make it available for public inspection and to</p> <p>7 give constructive notice.</p> <p>8 BY MS. FRENCH:</p> <p>9 Q. Okay. Perfect the document -- what was</p> <p>10 your second? Make it -- make a record?</p> <p>11 A. Make it available for public inspection.</p> <p>12 Q. Okay. Make it available for public</p> <p>13 inspection. And what was the --</p> <p>14 A. Which may very well be constructive</p> <p>15 notice.</p> <p>16 Q. And then constructive notice. What's</p> <p>17 constructive notice?</p> <p>18 A. To give someone an understanding that</p> <p>19 something is -- they're on notice of an event, an</p> <p>20 occurrence, something exists.</p> <p>21 Q. Okay.</p> <p>22 A. So to bring someone into knowledge of</p> <p>23 something or make them aware of something.</p> <p>24 Q. And what is perfecting the document?</p> <p>25 A. I wouldn't be able to speak to that</p>

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<p style="text-align: right;">Page 77</p> <p>1 because it's not a concern of the clerk's office.</p> <p>2 Q. So the clerk's office may record documents</p> <p>3 and it may have an effect of perfection, but the</p> <p>4 clerk's office isn't providing any kind of legal</p> <p>5 stamp or approval indicating that that's in fact</p> <p>6 what has happened. There's no representation to</p> <p>7 that effect.</p> <p>8 A. Correct.</p> <p>9 Q. That would be between the parties to</p> <p>10 whatever the instrument is. Right? That would be</p> <p>11 their issue.</p> <p>12 A. I wouldn't be able --</p> <p>13 MR. KAHL: Object. Calls for a legal</p> <p>14 conclusion.</p> <p>15 MR. DOYLE: Did you complete your</p> <p>16 answer?</p> <p>17 A. I wouldn't be able to speak to that.</p> <p>18 BY MS. FRENCH:</p> <p>19 Q. Okay. There's no requirement to record a</p> <p>20 deed of trust, is there?</p> <p>21 MR. DOYLE: Do you understand the</p> <p>22 question? Whose requirement, I guess I would ask.</p> <p>23 But do you understand the question as phrased?</p> <p>24 A. We're not reaching out to make any</p> <p>25 determination whether something is required or not.</p>	<p style="text-align: right;">Page 79</p> <p>1 that it can collect the fee.</p> <p>2 A. Correct.</p> <p>3 Q. Now, you mentioned earlier that there's</p> <p>4 several ways for presenting documents for recording.</p> <p>5 You said you in person, mail, or online?</p> <p>6 A. Correct.</p> <p>7 Q. And what percentage of each method is</p> <p>8 used?</p> <p>9 A. Good question.</p> <p>10 Q. If you know.</p> <p>11 A. I would say about 60, 65 percent are</p> <p>12 electronic. The other is -- roughly 25 plus is</p> <p>13 through the mail, and then the other is over the</p> <p>14 counter.</p> <p>15 Q. Okay. And how long has Deschutes been</p> <p>16 using the electronic method?</p> <p>17 A. It was about the same time -- 2000 --</p> <p>18 2009, 2010. We've been doing it for three, four</p> <p>19 years.</p> <p>20 Q. And there's a time requirement, once a</p> <p>21 document is recorded and indexed, to return the</p> <p>22 original. Correct?</p> <p>23 A. Correct.</p> <p>24 Q. And is it like -- is it ten days?</p> <p>25 A. It's ten days.</p>
<p style="text-align: right;">Page 78</p> <p>1 BY MS. FRENCH:</p> <p>2 Q. Right.</p> <p>3 A. So I can't speak to the requirement that</p> <p>4 someone may be looking at, whether they're -- so as</p> <p>5 a receiving party and performing ministerial</p> <p>6 functions, we're not looking out at someone needing</p> <p>7 to do something. So if it's requiring them or if</p> <p>8 it's not requiring them --</p> <p>9 BY MS. FRENCH:</p> <p>10 Q. Okay. So you don't ever do a land search,</p> <p>11 make sure people have recorded all documents that</p> <p>12 need to go -- that need to be recorded for whatever</p> <p>13 reason? That's not the county's prerogative?</p> <p>14 A. Correct.</p> <p>15 Q. And if somebody takes out -- if</p> <p>16 somebody -- if I give Mr. Chaimov a deed of trust</p> <p>17 against my property, and he decides not to record</p> <p>18 it, that's his issue. Right?</p> <p>19 A. I would say that I would presume it might</p> <p>20 be his issue.</p> <p>21 Q. It wouldn't be an issue for Deschutes</p> <p>22 County.</p> <p>23 A. It wouldn't an issue for Deschutes County.</p> <p>24 Q. And Deschutes County wouldn't be banging</p> <p>25 on his door and demanding that he come record it so</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. And has Deschutes County been able to meet</p> <p>2 that requirement?</p> <p>3 A. Yes.</p> <p>4 Q. Has there ever been a time when it wasn't</p> <p>5 meeting that requirement?</p> <p>6 A. There may have been a day or two. We</p> <p>7 pride ourselves in returning original documents, and</p> <p>8 so there may have been one or two days in about 15</p> <p>9 years that we haven't met the ten days.</p> <p>10 Q. Okay. And when a deed of trust is</p> <p>11 presented for recording, who usually presents the</p> <p>12 document?</p> <p>13 A. Usually?</p> <p>14 Q. Uh-huh.</p> <p>15 A. I have no idea. Title companies is where</p> <p>16 we get most of our records, the submission of our</p> <p>17 records, and they submit those electronically, but</p> <p>18 we get them all over the countryside.</p> <p>19 Q. Okay. Are you supposed to keep track of</p> <p>20 who submits the document to you?</p> <p>21 A. Yes.</p> <p>22 Q. And -- were you going to add something?</p> <p>23 A. I was going to say, we are required in our</p> <p>24 index of where to return the original document, but</p> <p>25 we have also who has paid for the document, who has</p>

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JEFF SAGESER VOLUME I  
MULTNOMAH VS. MORTGAGE ELECTRONICMay 22, 2015  
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<p style="text-align: right;">Page 105</p> <p>1 (Beginning Volume 2.)</p> <p>2</p> <p>3 THE VIDEOGRAPHER: We're back on the</p> <p>4 record at 12:51 p.m.</p> <p>5 BY MS. FRENCH:</p> <p>6 Q. Sorgeson [sic]. Right?</p> <p>7 A. Sageser.</p> <p>8 Q. Saget?</p> <p>9 A. Sageser.</p> <p>10 Q. Sageser. Mr. Sageser -- sorry about that.</p> <p>11 A. You're not alone.</p> <p>12 Q. Okay. We're back on the record, and</p> <p>13 you're still under oath, just as you were this</p> <p>14 morning. Do you understand that?</p> <p>15 A. Yes.</p> <p>16 Q. Have you ever had to correct information</p> <p>17 about a recorded document?</p> <p>18 A. We maintain the index.</p> <p>19 Q. Okay.</p> <p>20 A. So corrections to the index have been made</p> <p>21 after -- even after verification, if it's brought to</p> <p>22 our attention that a correction needs to be made,</p> <p>23 we'll look into it and make the correction.</p> <p>24 Q. And how -- and how do you make that</p> <p>25 correction?</p>	<p style="text-align: right;">Page 107</p> <p>1 of recording, and you said that one of the purposes</p> <p>2 was perfection?</p> <p>3 A. (Witness nodded.)</p> <p>4 Q. Deschutes County does not guarantee</p> <p>5 perfection. Is that correct?</p> <p>6 A. Correct.</p> <p>7 Q. So it doesn't -- it provides the service</p> <p>8 of recording, but perfection may be an effect of</p> <p>9 recording. Is that correct?</p> <p>10 A. Could be.</p> <p>11 Q. And so would it be fair to say that</p> <p>12 Deschutes County does not provide the service of</p> <p>13 perfecting a lien?</p> <p>14 A. It's certainly not one of our -- we don't</p> <p>15 advertise that in any nature, and we wouldn't be</p> <p>16 asked, "What are you doing here?" We wouldn't -- it</p> <p>17 wouldn't come to a normal conversation saying,</p> <p>18 "Well, we're perfecting the documents." That's</p> <p>19 outside of our -- yeah.</p> <p>20 Q. You mentioned Helion as your vendor for</p> <p>21 indexing?</p> <p>22 A. No. They -- our recording system is done</p> <p>23 by -- is written by Helion, and they have provided a</p> <p>24 module in which our documents are sort of tested</p> <p>25 against, if you will, a set of rules called</p>
<p style="text-align: right;">Page 106</p> <p>1 A. We pull up the document, and we make a</p> <p>2 correction to -- most likely a typographical error.</p> <p>3 That's where most of them are found.</p> <p>4 Q. So you can -- you can manually do that</p> <p>5 right in the -- in the software system?</p> <p>6 A. Yes.</p> <p>7 Q. You just queue it up and change it and hit</p> <p>8 save?</p> <p>9 A. Yes.</p> <p>10 Q. You don't -- does it cost anything to do</p> <p>11 that?</p> <p>12 A. No.</p> <p>13 Q. And if there's a concern about having MERS</p> <p>14 indexed as an indirect party, could you work with</p> <p>15 Helion to come up with some sort of macro to fix</p> <p>16 that and to remove them as an indirect party?</p> <p>17 MR. KAHL: I'm going to object that</p> <p>18 that's a vague question.</p> <p>19 A. I could work with any of our vendors if a</p> <p>20 change was necessary. They're very bright folks.</p> <p>21 BY MS. FRENCH:</p> <p>22 Q. And has Deschutes County inquired about</p> <p>23 the cost of making that kind of change?</p> <p>24 A. No.</p> <p>25 Q. Okay. We talked earlier about the purpose</p>	<p style="text-align: right;">Page 108</p> <p>1 autoindexing so -- and we license that software</p> <p>2 so --</p> <p>3 Q. Okay. And is there -- let me just put it</p> <p>4 this way. Is that the only service that they</p> <p>5 provide -- that Helion provides, or do they provide</p> <p>6 other services to you?</p> <p>7 A. There -- they provide an assessment and</p> <p>8 taxation component to the assessor's office and</p> <p>9 the -- our tax office. It's called ORCATS.</p> <p>10 Q. Do they -- you mentioned that there's some</p> <p>11 stuff -- that there's some data that you can enter</p> <p>12 into the system that doesn't go into the index?</p> <p>13 A. Yes.</p> <p>14 Q. Does Helion provide the software interface</p> <p>15 for that?</p> <p>16 A. Yes.</p> <p>17 Q. And when documents are electronically</p> <p>18 submitted to you, does that come through a Helion</p> <p>19 interface?</p> <p>20 A. Yes.</p> <p>21 Q. Is it fair to say that your entire system</p> <p>22 of recording is based on Helion software?</p> <p>23 A. Real property, yes. We have other</p> <p>24 recording functions that do not use software</p> <p>25 provided by -- or made by -- developed by Helion.</p>

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RALPH MARLE HOEHNE VOLUME 1-2  
COUNTY OF MULTNOMAH vs. MORTGAGE ELECTRONIC

June 11, 2015

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<p style="text-align: center;">Page 1</p> <p>IN THE CIRCUIT COURT OF THE STATE OF OREGON</p> <p>IN AND FOR THE COUNTY OF MULTNOMAH</p> <p>COUNTY OF MULTNOMAH, )</p> <p>Plaintiff, )</p> <p>v. ) No.1212-16328</p> <p>MORTGAGE ELECTRONIC ) Volume 1</p> <p>REGISTRATION SYSTEMS, INC., ) Pages 1-144</p> <p>et al., )</p> <p>Defendants. )</p> <p style="text-align: center;">ORCP 39C(6)</p> <p style="text-align: center;">DEPOSITION OF LANE COUNTY, OREGON</p> <p style="text-align: center;">BY RALPH MARLE HOEHNE</p> <p style="text-align: center;">Thursday, June 11th, 2015</p> <p style="text-align: center;">9:24 A.M.</p> <p style="text-align: center;">THE VIDEOTAPED DEPOSITION OF RALPH MARLE</p> <p>HOEHNE was commenced at Lane County Offices, 125 East 8th Avenue, Eugene, Oregon, before Deborah M. Bonds, CSR-RPR, Certified Shorthand Reporter in and for the State of Oregon.</p>	<p style="text-align: center;">Page 3</p> <p>(continued)</p> <p>For Defendants U.S. Bank National Association:</p> <p>DORSEY &amp; WHITNEY LLP</p> <p>701 5th Avenue, Suite 6100</p> <p>Seattle, Washington 98104</p> <p>206/903-8870</p> <p>BY: AMY STERNER NELSON (via phone)</p> <p>sterner.amy@dorsey.com</p> <p>For Defendants WMC Mortgage and JP Mortgage Chase Bank, NA:</p> <p>BUCKLEY SANDLER, LLP</p> <p>1250 24th Street NW, Suite 700</p> <p>Washington, DC 20037</p> <p>202/349-8061</p> <p>BY: ANDREW R. LOUIS (via phone)</p> <p>For Defendant CitiMortgage, Inc.:</p> <p>MAYER BROWN LLP</p> <p>71 South Wacker Drive</p> <p>Chicago, Illinois 60606</p> <p>312/701-8821</p> <p>BY: THOMAS P. EVANS</p> <p>tevans@mayerbrown.com (via phone)</p> <p>Also Present:</p> <p>ROBIN CASSIDY-DURAN, VIDEOGRAPHER</p> <p>MADOLYN CRUMPTON (via phone)</p> <p>Reported by:</p> <p>DEBORAH M. BONDS, CSR-RPR</p> <p>CC REPORTING &amp; VIDEOCONFERENCING</p> <p>EUGENE 541/485-0111</p>
<p style="text-align: center;">Page 2</p> <p style="text-align: center;">APPEARANCES</p> <p>For the Witness:</p> <p>LANE COUNTY COUNSELS OFFICE</p> <p>125 East 8th Avenue</p> <p>Eugene, Oregon 97401</p> <p>541/682-6561</p> <p>BY: STEPHEN E. DINGLE</p> <p>stephen.dingle@co.lane.or.us</p> <p>For Plaintiff County of Multnomah:</p> <p>D'AMORE LAW GROUP</p> <p>4230 Galewood Street, Suite 200</p> <p>Lake Oswego, Oregon 97035</p> <p>503/222-6333</p> <p>BY: NICK KAHL</p> <p>nick@damorelaw.com</p> <p>For Defendants Bank of America and Wells Fargo:</p> <p>GOODWIN PROCTER</p> <p>901 New York Avenue, N.W.</p> <p>Washington, D.C. 20001</p> <p>202/346-4143</p> <p>BY: JOSEPH F. YENOUSKAS</p> <p>jyenouskas@goodwinprocter.com</p> <p>For Defendants MERS and MERSCORP:</p> <p>DAVIS WRIGHT TREMAINE</p> <p>1300 SW Fifth Avenue, Suite 2400</p> <p>Portland, Oregon 97201</p> <p>503/778-5328</p> <p>BY: GREGORY A. CHAIMOV</p> <p>gregorychaimov@dwtd.com</p> <p style="text-align: right;">(continued)</p>	<p style="text-align: center;">Page 4</p> <p style="text-align: center;">INDEX</p> <p>WITNESS.....PAGE</p> <p>RALPH MARLE HOEHNE</p> <p>BY MR. YENOUSKAS 7,214</p> <p>BY MR. CHAIMOV 200</p> <p>BY MR. KAHL 200,222</p> <p>EXHIBITS.....PAGE</p> <p>No. 1 Declaration of custodian of records 8</p> <p>No. 2 Notice of deposition 9</p> <p>No. 3 Document Receiving, Batching, and 57</p> <p>Receipting Procedures</p> <p>No. 4 Document type list 67</p> <p>No. 5 Lane County website printout 71</p> <p>No. 6 Deed of trust 83</p> <p>No. 7 Screen print of Helion index 88</p> <p>No. 8 Deed of trust 89</p> <p>No. 9 Screen print of Helion index 92</p> <p>No. 10 Email string 94</p> <p>No. 11 Memo and Bev Smith email 97</p> <p>No. 12 Email string, 4/27/11 104</p> <p>No. 13 Email string, 6/8/11 107</p> <p style="text-align: right;">(continued)</p>

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RALPH MARLE HOEHNE VOLUME 1-2  
COUNTY OF MULTNOMAH vs. MORTGAGE ELECTRONICJune 11, 2015  
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<p style="text-align: right;">Page 53</p> <p>1 A. Yes.</p> <p>2 Q. Do you know how other counties treat the</p> <p>3 indexing of MERS?</p> <p>4 A. No.</p> <p>5 Q. Okay. No idea at all?</p> <p>6 A. Well, no. Actually, no, not really. I</p> <p>7 mean --</p> <p>8 Q. It's not been a topic of discussion with</p> <p>9 the Clerks Association?</p> <p>10 A. Well, I think it has been topic of</p> <p>11 discussion, but I couldn't sit here and tell you</p> <p>12 that Douglas County does it in a certain way. I</p> <p>13 don't know that.</p> <p>14 Q. Oh, no. And I'm not asking for specific</p> <p>15 counties but, for example, do you know that some</p> <p>16 other counties do it a different way?</p> <p>17 A. I would -- it would not surprise me to</p> <p>18 learn that other counties do things differently. I</p> <p>19 mean, we hear it from submitters all the time.</p> <p>20 Q. Right. So it's not a black-and-white</p> <p>21 process?</p> <p>22 A. No.</p> <p>23 Q. Take a quick break. We've been going for</p> <p>24 a while. Five-minute break?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 55</p> <p>1 into either of those categories so we don't index</p> <p>2 the trustee.</p> <p>3 Q. Do you know whether the trustee is granted</p> <p>4 any rights under a deed of trust?</p> <p>5 A. No, not going to make legal</p> <p>6 determinations.</p> <p>7 Q. Okay. Now, you mentioned that the</p> <p>8 documents are scanned.</p> <p>9 A. They are.</p> <p>10 Q. How long has that been going on for?</p> <p>11 A. Since -- well, since 1999, and we've --</p> <p>12 since we really started with using the Helion</p> <p>13 software system, and we've since gone back to</p> <p>14 mid-'90s, I think, that we've converted images back.</p> <p>15 Q. So there's a process underway to go back</p> <p>16 into the past and make digitized images?</p> <p>17 A. There is.</p> <p>18 Q. Okay. And is that still ongoing?</p> <p>19 A. It is, slowly.</p> <p>20 Q. Slow process? And is Helion doing that</p> <p>21 for you?</p> <p>22 A. Well, we're doing it ourselves actually.</p> <p>23 Q. Okay. And prior to the earliest date that</p> <p>24 you have digitized images, in what form are the</p> <p>25 images?</p>
<p style="text-align: right;">Page 54</p> <p>1 THE VIDEOGRAPHER: One moment, please.</p> <p>2 MR. YENOUSKAS: My voice gets tired.</p> <p>3 THE VIDEOGRAPHER: We've off the</p> <p>4 record at 10:21 a.m.</p> <p>5 (Recess: 10:21 to 10:37 a.m.)</p> <p>6 THE VIDEOGRAPHER: We're back on the</p> <p>7 record at 10:37 a.m.</p> <p>8 BY MR. YENOUSKAS:</p> <p>9 Q. Mr. Hoehne, we didn't discuss one other</p> <p>10 part of your deed of trust, the trustee.</p> <p>11 A. Yes.</p> <p>12 Q. You're aware that a trustee is a party to</p> <p>13 a deed of trust?</p> <p>14 A. Yes.</p> <p>15 Q. Does Lane County index the trustee in</p> <p>16 either the grantor or the grantee indices?</p> <p>17 A. No.</p> <p>18 Q. Why is that?</p> <p>19 A. Because they're neither the grantor nor</p> <p>20 the grantee.</p> <p>21 Q. And how was that determination made?</p> <p>22 A. I don't know how to answer the question.</p> <p>23 I mean, we treat -- we treat the grantee as the</p> <p>24 beneficiary or the lender or the nominee, and the</p> <p>25 grantor is the borrower. The trustee doesn't fall</p>	<p style="text-align: right;">Page 56</p> <p>1 A. Microfilm.</p> <p>2 Q. Microfilm. And how far do those images go</p> <p>3 back?</p> <p>4 A. Well, they -- they go back to the</p> <p>5 beginning of recording in Lane County.</p> <p>6 Q. So everything has been microfilmed.</p> <p>7 A. Yes. Everything has been filmed.</p> <p>8 Q. Now, we've been talking about this process</p> <p>9 of recording documents in which Lane County receives</p> <p>10 a fee for the service of recording the document.</p> <p>11 A. Uh-huh.</p> <p>12 Q. Have you ever heard of a service called</p> <p>13 perfecting a lien?</p> <p>14 A. Well, I mean, I've heard the term before.</p> <p>15 Q. Does Lane County perfect liens?</p> <p>16 A. Not that I know of.</p> <p>17 Q. You don't charge a fee for a service</p> <p>18 called perfecting a lien?</p> <p>19 A. No, sir.</p> <p>20 Q. Okay. You don't have policies and</p> <p>21 procedures for perfecting liens?</p> <p>22 A. No.</p> <p>23 Q. Okay. Not a service the county provides,</p> <p>24 in other words?</p> <p>25 A. No.</p>

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**TASSI O'NEIL**  
**COUNTY OF MULTNOMAH v. MORTGAGE ELECTRONIC**

May 29, 2015

1-4

<p style="text-align: right;">Page 1</p> <p>IN THE CIRCUIT COURT OF THE STATE OF OREGON</p> <p>IN AND FOR THE COUNTY OF MULTNOMAH</p> <p>COUNTY OF MULTNOMAH, )</p> <p>)</p> <p>)</p> <p>Plaintiff, )</p> <p>)</p> <p>v. ) No. 1212-16328</p> <p>)</p> <p>MORTGAGE ELECTRONIC REGISTRATION) )</p> <p>SYSTEMS, INC., et al., )</p> <p>)</p> <p>Defendants. )</p> <p>ORCP 39C(6)</p> <p>DEPOSITION OF THE OREGON ASSOCIATION</p> <p>OF COUNTY CLERKS</p> <p>BY TASSI O'NEIL</p> <p>May 29, 2015</p> <p>Friday</p> <p>9:12 A.M.</p> <p>THE VIDEOTAPED DEPOSITION OF TASSI</p> <p>O'NEIL was taken at Local Government Center, 1201</p> <p>Court Street Northeast, Salem, Oregon, 97301,</p> <p>before Jan R. Duiven, CSR, FCRR, CCP, Certified</p> <p>Shorthand Reporter in and for the State of Oregon.</p>	<p style="text-align: right;">Page 3</p> <p>APPEARANCES</p> <p>For Defendant WMC Mortgage Corporation,</p> <p>JPMorgan Chase Bank, N.A., and Chase Home Mortgage</p> <p>Corporation:</p> <p>BUCKLEY SANDLER</p> <p>1250 24th Street NW, Suite 700</p> <p>Washington, DC 20037</p> <p>202/349-8061</p> <p>BY: MR. ANDREW R. LOUIS</p> <p>alouis@buckleysandler.com</p> <p>(Appearing by phone)</p> <p>For Defendant CitiMortgage, Inc.:</p> <p>MAYER BROWN LLP</p> <p>71 South Wacker Drive</p> <p>Chicago, Illinois 60606</p> <p>312/701-8821</p> <p>BY: MR. THOMAS P. EVANS</p> <p>tevens@mayerbrown.com</p> <p>(Appearing by phone)</p> <p>For Defendant U.S. Bank in its capacity as</p> <p>Securitization Trustee:</p> <p>LARKINS VACURA LLP</p> <p>1251 SW Morrison Street, Suite 700</p> <p>Portland, Oregon 97204</p> <p>503/542-3104</p> <p>BY: MR. WILLIAM L. LARKINS</p> <p>wlarkins@larkinsvacura.com</p> <p>(Appearing by phone)</p> <p>For Defendant U.S. Bank in its individual</p> <p>capacity:</p> <p>DORSEY &amp; WHITNEY</p> <p>Columbia Center</p> <p>701 Fifth Avenue, Suite 6100</p> <p>Seattle, Washington 98104</p> <p>206/903-8870</p> <p>MS. AMY NELSON</p> <p>sterner.nelson.amy@dorsey.com</p> <p>(Appearing by phone)</p>
<p style="text-align: right;">Page 2</p> <p>APPEARANCES</p> <p>For the Plaintiff:</p> <p>D'AMORE LAW GROUP</p> <p>4230 Galewood Street, Suite 200</p> <p>Lake Oswego, Oregon 97035</p> <p>503/222-6333</p> <p>BY: MR. NICK KAHL</p> <p>nick@damorelaw.com</p> <p>MS. MADOLYN CRUMPTON</p> <p>2007 3rd Avenue N.</p> <p>Birmingham, Alabama 35203</p> <p>crumptonlaw@gmail.com</p> <p>205/250-0010</p> <p>(Appearing by phone)</p> <p>For Defendants Bank of America, N.A., EverHome</p> <p>Mortgage Company, and Wells Fargo Bank, N.A.:</p> <p>GOODWIN PROCTER LLP</p> <p>53 State Street</p> <p>Boston, Massachusetts 02109-2802</p> <p>617/570-1000</p> <p>BY: MS. YVONNE W. CHAN</p> <p>ychan@goodwinprocter.com</p> <p>For Defendants MERS, Inc., and MERSCORP Holdings:</p> <p>DAVIS WRIGHT TREMAINE LLP</p> <p>1300 SW 5th Avenue, Suite 2400</p> <p>Portland, Oregon 97201</p> <p>503/778-5328</p> <p>BY: MR. GREGORY A. CHAIMOV</p> <p>gregorychaimov@dwt.com</p> <p>For the Deponent:</p> <p>MR. ROB BOVETT</p> <p>Association of Oregon Counties</p> <p>1201 Court Street NE, Suite 300</p> <p>Salem, Oregon 97301</p> <p>503/585-8351</p> <p>rbovett@aocweb.org</p>	<p style="text-align: right;">Page 4</p> <p>APPEARANCES</p> <p>For Defendant SunTrust Mortgage:</p> <p>SNELL &amp; WILMER</p> <p>One Arizona Center</p> <p>400 East Van Buren Street, Suite 1900</p> <p>Phoenix, Arizona 85004</p> <p>602/382.6310</p> <p>BY: MS. AMANDA JENKINS</p> <p>ajenkins@swlaw.com</p> <p>(Appearing by phone)</p> <p>The Videographer:</p> <p>MR. DAVID MCGINNIS</p> <p>Reported by:</p> <p>JAN R. DUIVEN, CSR, FCRR, CCP</p>



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TASSI O'NEIL  
COUNTY OF MULTNOMAH v. MORTGAGE ELECTRONIC

May 29, 2015  
61-64

<p style="text-align: right;">Page 61</p> <p>1 Q. Is MERS -- or was MERS one of those 2 items? 3 A. Yes. 4 Q. Okay. Beginning from around the time 5 that it was formed? 6 A. Yes. I believe so. 7 MR. KAHL: We're about an hour in 8 right now. Do you need a break? 9 THE WITNESS: Sure. 10 THE VIDEOGRAPHER: And we're going 11 off the record. 12 (Recess: 10:17 a.m. to 10:26 a.m.) 13 THE VIDEOGRAPHER: And we're back on 14 the record. Counsel may proceed. 15 MS. CHAN: Thank you. 16 BY MS. CHAN: 17 Q. Ms. O'Neil, do you recall the NACRC 18 affiliate reporting back at any of the OACC 19 meetings during any of the time that you were a 20 member about MERS? 21 A. Not specifically, no. 22 Q. What about the -- and I'm going to get 23 this wrong -- but the I -- 24 A. IACREOT. 25 Q. IACREOT.</p>	<p style="text-align: right;">Page 63</p> <p>1 being recorded, those fees were not being passed 2 on to those agencies. 3 Q. Okay. Who sets the fees? 4 A. There's statute -- statutes of 5 different fees for different items, as well as 6 counties set some of their own fees. 7 Q. And the fees are paid each time a 8 document is recorded? 9 A. Yes. 10 Q. Was there any discussion about whether 11 there was a way to get those fees? 12 A. Can you repeat the question? 13 Q. Sure. You said that there was -- that 14 the discussion was about fees that weren't being 15 paid because assignments weren't being recorded. 16 Was there a discussion about whether there was a 17 way to get the fees to be paid? 18 A. I believe there was discussion about 19 those documents that hadn't been recorded to see 20 if there was a way to have them be recorded, as 21 well as there were lawsuits within the United 22 States that were happening. 23 Q. Okay. Tell me what you mean by see if 24 there's a way to have them being recorded. 25 A. In -- in general, as counties, we like</p>
<p style="text-align: right;">Page 62</p> <p>1 A. I don't recall specifically. 2 Q. And PRIA? 3 A. I don't recall that specifically 4 either. 5 Q. Were there discussions at any of the 6 OACC meetings about the loss of recording fees? 7 A. Yes. 8 Q. Okay. What was the discussion? 9 A. That as the keeper of the records, the 10 assignments were not being recorded in the 11 counties' records, therefore, the fees were -- 12 were not being given to the counties to record 13 those documents. 14 Q. Was there a discussion at those 15 meetings about whether assignments were required? 16 A. I don't recall. 17 Q. The discussion about the fees that 18 were then paid, was it a discussion about whether 19 those fees should have been paid or -- or what -- 20 just tell me more about what was discussed. 21 A. Anytime a document is recorded, 22 there's recording fees that are not only -- that 23 we collect that the county gets a small portion 24 of, and fees that go on to state agencies as well 25 and others. And if those assignments were not</p>	<p style="text-align: right;">Page 64</p> <p>1 to have documents recorded within our office as 2 we're the keeper of the records and it keeps the 3 chain of title clean. And if a document's not 4 recorded, we, of course, would like it to be 5 recorded so that when the public or title 6 companies, attorneys, anyone looking at those 7 records would see how that chain of title is 8 complete. 9 Q. So that's something you would prefer 10 to have happen? 11 A. Absolutely. 12 Q. Can you force it? 13 A. Not specifically, no. 14 Q. So there are -- there may be other 15 cases not involving MERS where you know that 16 assignments aren't being recorded for a particular 17 property or particular deed of trust. Is there 18 anything you can do about that? 19 A. No. 20 MR. KAHL: Wait. When you're asking 21 her can she do it, are you asking her as the 22 president of OACC or as the Tillamook County 23 clerk? 24 MS. CHAN: Well, she was following 25 up her previous question about what we would --</p>



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1                   IN THE CIRCUIT COURT OF THE STATE OF OREGON

2                               FOR THE COUNTY OF MULTNOMAH

3

4           COUNTY OF MULTNOMAH,                               Case No. 1212-16328

5                               Plaintiff,

6                               vs.

7           MORTGAGE ELECTRONIC

8           REGISTRATION SYSTEMS, INC., a

9           Delaware corporation; MERSCORP

10          HOLDINGS, INC, previously

11          MERSCORP, INC.; BANK OF AMERICA,

12          N.A., dba BANC OF AMERICA

13          INVESTMENT SERVICES, INC., a Florida

14          Corporation;

15

16          (Case caption continues on next page)

17

18

19                               ORCP 39 C(6) VIDEOTAPE DEPOSITION OF

20                               BRENDA GIESSELMANN

21                               Taken March 25, 2014

22                               Commencing at 9:09 a.m.

23

24

25                               REPORTED BY:   MARY P. MITCHELL, RDR, CRR, CLR

1 because she has to keep up with you on the reporting.

2 A. Sorry.

3 MR. HEFFERON: No problem.

4 A. "MERS signing officers should understand the  
5 difference between recording and registering a mortgage  
6 loan. Mortgages, deed of trust, security deeds are  
7 recorded in the applicable public land records.  
8 Recording is done in order to perfect a security  
9 instrument and to establish priority ahead of other  
10 secured creditors. Mortgage loan information is  
11 registered on either the MERS System or MERS  
12 Commercial, depending on the type of loan.  
13 Registration is done in order to track changes in  
14 servicing rights and beneficial ownership interests in  
15 mortgage loans. Registering the mortgage loan  
16 information on the MERS System or MERS Commercial is  
17 separate and apart from the function that the county  
18 recorders perform."

19 Q. All right. And then it says underneath that  
20 there are three types of loans registered on the MERS  
21 System. You have a loan closed on a security  
22 instrument where MERS is the original mortgagee, known  
23 as a MOM loan. And if I use the term "MOM" today, are  
24 you familiar with that?

25 A. Yes.

1 Q. All right. And then you have loans where the  
2 lien is assigned to MERS post-closing. And that's a  
3 non-MOM loan, is that correct?

4            A.    Yes.

5 Q. All right. And then loans registered solely  
6 for tracking where MERS is not the mortgagee or the  
7 assignee, known as iRegistration. Are you familiar  
8 with all three of those?

9           A.   Yes.

[illegible]

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

WELLS FARGO BANK, NA,

Plaintiff,

vs.

DAVID BRATCHER A/K/A DAVID J.  
BRATCHER; TRACI BRATCHER A/K/A  
TRACI A. BRATCHER; STATE OF OREGON;  
AND OCCUPANTS OF THE PREMISES,

Defendants.

Case No. 1209-11175

~~PROPOSED~~ GENERAL JUDGMENT OF  
FORECLOSURE

The Court finds that an Order granting Plaintiff Wells Fargo Bank, NA's ("Wells Fargo") Motion for Summary Judgment as to Plaintiff's Complaint for Deed of Trust Foreclosure, as against defendants David Bratcher, a/k/a David J. Bratcher, Traci Bratcher, a/k/a Traci A. Bratcher and Occupants of the Premises, was entered on October 3, 2013. Now therefore, the Court being fully advised in the premises and finding that a General Judgment of Foreclosure should be entered in favor of Wells Fargo based upon the following findings, reasons, and conclusions by the Court:

1. David Bratcher and Traci Bratcher executed and delivered to EverHome Mortgage Company a promissory note in the amount of \$171,112 (the "Note").

2. At the same time and place as the execution and delivery of the Note, and as part of the same transaction, David Bratcher and Traci Bratcher, the then owner of the real property described in Exhibit 1 attached hereto (the "Property"), executed and delivered a Deed of Trust ("Deed of Trust") to Mortgage Electronic Registration Systems, Inc. solely as nominee for

PAGE 1 - [PROPOSED] GENERAL JUDGMENT OF FORECLOSURE

1 EverHome Mortgage Company. The Deed of Trust was recorded in the official Multnomah  
2 County records on October 2, 2008, as document No. 2008-139297.

3 3. Sometime thereafter the Note and Deed of Trust were sold or assigned to plaintiff,  
4 who is the current holder of the Note and assignee of the Deed of Trust, as noted by the Corporate  
5 Assignment of Deed of Trust duly recorded in the official Multnomah County records on  
6 February 22, 2012, as document No. 2012-020199.

7 4. David Bratcher and Traci Bratcher breached the terms of the Note and Deed of  
8 Trust by failing to make a voluntary monthly payment which was due on October 1, 2011, and  
9 making no voluntary payments on the Note and Deed of Trust since that date. Therefore, the Note  
10 and Deed of Trust are in default.

11 5. On or about September 5, 2012, plaintiff commenced this action. On  
12 September 5, 2012, plaintiff then caused to be recorded a Notice of Pendency of an Action in the  
13 Multnomah County Land Records under Recorder No. 2012-111872 ("Notice of Lis Pendens").

14 6. An Order placing defendant State of Oregon in default was entered herein on  
15 December 24, 2012.

16 NOW, THEREFORE, IT IS HEREBY ORDERED, DECLARED AND ADJUDGED:

17 1. Plaintiff is entitled to the entry of judgment against defendants David Bratcher  
18 a/k/a David J. Bratcher, Traci Bratcher a/k/a Traci A. Bratcher, State of Oregon, ~~and Occupants~~  
19 ~~of the Premises~~, foreclosing any interest they may claim or have claimed in or to the Property  
20 (1429 NE La Mesa Avenue, Gresham, Oregon 97030), more fully described in Exhibit 1 hereto.

21 2. The Deed of Trust is a valid lien for the amount of plaintiff's judgment as set  
22 forth in Paragraph 4 below against the Property and fixtures located thereon and rents and leases  
23 relating thereto and situated in Multnomah County, Oregon, and that lien is superior to any  
24 interest, lien, or claim of any defendant, their successors, assigns or any purchasers or holders of  
25 any interest or encumbrances arising after October 2, 2008, in the Property described in  
26 Exhibit 1, or its fixtures, rents, or leases.

PAGE 2 - [PROPOSED] GENERAL JUDGMENT OF FORECLOSURE



3. The Deed of Trust is hereby foreclosed and all interests and/or claims held by defendants or their successors or assigns, including purchasers and/or holders of encumbrances, arising on or after October 2, 2008, in the Property or its fixtures, rents, and/or leases shall be sold by the Sheriff of Multnomah County, Oregon, in the manner provided by law and in accordance with the practice of this Court.

4. All rights, title and interest of defendants, and all persons claiming through or under defendants, as purchasers, encumbrancers, or otherwise, are forever foreclosed of all interest, lien or claim in the Property, and every portion thereof, including any statutory right of redemption as defendants may have herein, as provided by Oregon law, which right defendants David Bratcher and Traci Bratcher specifically agree to waive.

5. For purposes of allowing a credit bid to be made at any foreclosure or execution sale, Judgment is entered in favor of plaintiff in the principal amount of \$165,430.16, plus accrued interest to August 1, 2013, in the amount of \$21,402.65, plus interest on the principal amount from August 2, 2013, at the rate of 6.75% per annum until entry of judgment, plus recoverable costs and fees (including, but not limited to, costs associated with escrow advances and late charges) in the amount of \$7,641.08, and attorneys' fees and costs in the amount of \$19,768.65, and a Writ of Execution shall issue therefor against the property, fixtures, rents and/or leases and not against any defendant personally.

6. The proceeds of the sale shall be applied first towards the costs of sale, then toward the satisfaction of the judgment amount set forth in Paragraph 4 above, then the surplus, if any, to the clerk of the court to be distributed to any other party or parties as may establish their right and priority thereto.

6. Plaintiff is permitted to become a bidder and purchaser at the foreclosure sale, and plaintiff or any subsequent purchaser shall be entitled to immediate possession of the Property.

~~If the Property is not so vacated, the Court hereby orders the Clerk of the Court to issue a writ of assistance ordering the Sheriff to deliver possession of the Property to plaintiff or to any~~

*cm*

~~purchaser upon written request by plaintiff or purchaser to the Clerk of the Court and without  
any further order necessary from the Court. The Court shall retain jurisdiction of this matter  
until David Bratcher and/or Traci Bratcher, and/or any persons occupying the Property with  
them, have vacated the Property and the sale is completed.~~

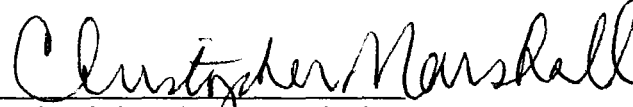
CM

7. The defendants and each of them, and all persons claiming through or under defendants, as purchasers, encumbrancers, or otherwise, are forever foreclosed of all interest, lien, or claim in the Property and every portion thereof.

8. Defendants David Bratcher's and Traci Bratcher's Counterclaim is dismissed with prejudice.

9. The Court finds there is no just reason for delay of the entry of judgment and directs entry of final judgment on Wells Fargo's claims against Defendants as set forth herein.

DATED this 12<sup>th</sup> day of ~~January~~ February, 2014.

  
Honorable Christopher J. Marshall  
Circuit Court Judge

Submitted by:

Julie M. Engbloom, OSB No. 066988  
Lane Powell PC  
Of Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on January 2, 2014, I caused to be served a copy of the foregoing [PROPOSED] GENERAL JUDGMENT OF FORECLOSURE on the following person(s) in the manner indicated below at the following address(es):

Mr. David J. Bratcher  
1429 NE La Mesa Avenue  
Gresham, OR 97030  
Telephone: (503) 970-1107

Pro se defendant

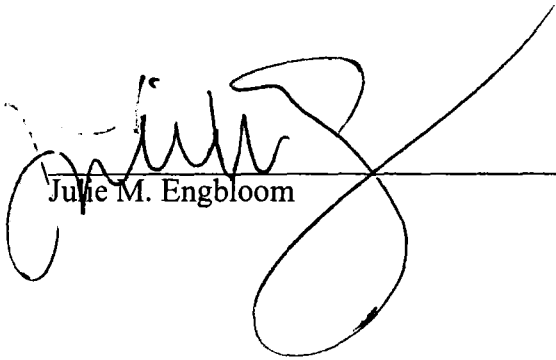
Mrs. Traci A. Bratcher  
1429 NE La Mesa Avenue  
Gresham, OR 97030  
Telephone: (503) 970-1107  
E-Mail: traci.bratcher@comcast.net

Pro se defendant

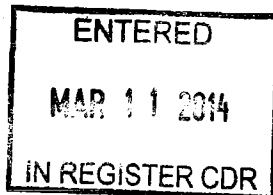
State of Oregon  
c/o Department of Justice  
1162 Court Street NE  
Salem, OR 97301

Occupants of the Premises  
1429 NE LaMesa Avenue  
Gresham, OR 97030

- ☐ by CM/ECF  
☐ by Electronic Mail  
☐ by Facsimile Transmission  
☒ by First Class Mail  
☐ by Hand Delivery  
☐ by Overnight Delivery

  
Julie M. Engbloom

CERTIFICATE OF SERVICE



FILED  
2014 FEB 21 PM 4:04  
CIRCUIT COURT  
FOR MULTNOMAH COUN

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

WELLS FARGO BANK, N.A., its successors in )  
interest and/or assigns, )

Plaintiff, )

vs. )

HAROLD F. BEARD, JR., AKA HAROLD )  
FINDLY BEARD; NATIONAL CITY BANK, )  
NKA PNC BANK, NATIONAL )  
ASSOCIATION; and Occupants of the Premises, )

Defendants. )

Case No. 1207-08910

STIPULATED GENERAL JUDGMENT OF  
FORECLOSURE

Plaintiff Wells Fargo Bank, N.A. ("plaintiff") and defendant Harold F. Beard, Jr., aka Harold Findly Beard ("defendant"), acting by and through their respective counsel of record, hereby stipulate that plaintiff is entitled to entry of final judgment in its favor by reason of all requests for relief against all parties and for the following reasons:

1. On or about March 21, 2007, defendant executed and delivered to Directors Mortgage Inc. a promissory note in the amount of \$411,975.00 (the "Note").

2. At the same time and place as the execution and delivery of the Note, and as part of the same transaction, defendant, the then owner of the real property located at 6014 Southwest View Point Terrace, Portland, Oregon 97239, and legally described as follows:

Lot 15, Block 5, Southport, Portland, Multnomah County, Oregon  
(the "Property"), executed and delivered a Deed of Trust ("Deed of Trust") to Mortgage Electronic Registration Systems, Inc., solely as nominee for Directors Mortgage Inc. and its successors and

PAGE 1 - STIPULATED GENERAL JUDGMENT OF FORECLOSURE

1 assigns. The Deed of Trust was recorded in the official Multnomah County records on March 27,  
2 2007, as document number 2007-053285.

3 3. Sometime thereafter, the Note and Deed of Trust were sold or assigned to plaintiff,  
4 who is the current holder of the Note and assignee of the Deed of Trust, as noted by the Assignment  
5 of Deed of Trust duly recorded in the official Multnomah County records on April 20, 2009, as  
6 document number 2009-053468.

7 4. Defendant breached the terms of the Note and Deed of Trust by failing to make a  
8 voluntary monthly payment which was due on May 1, 2011, and making no voluntary payments on  
9 the Note and Deed of Trust since that date. Therefore, the Note and Deed of Trust are in default.

10 5. A Limited Judgment of Foreclosure against National City Bank, nka PNC Bank,  
11 National Association, was entered herein on March 14, 2013.

12 6. An Order dismissing defendant Harold F. Beard, Jr.'s Third Counterclaim for  
13 common law fraud was entered herein on October 10, 2013.

14 NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that:

15 1. Plaintiff is entitled to the entry of judgment against all defendants herein,  
16 foreclosing any interest they may claim or have claimed in or the Property. Plaintiff's judgment  
17 against defendant National City Bank, nka PNC Bank, National Association is not for any costs  
18 or money based upon the default entered against it.

19 2. The Deed of Trust recorded in the Multnomah County public records on  
20 March 27, 2007, as document number 2007-053285 is a valid lien for the amount of plaintiff's  
21 judgment as set forth in the Money Award below against the Property and fixtures located  
22 thereon and rents and leases relating thereto and situated in Multnomah County, Oregon, and that  
23 lien is superior to any interest, lien, or claim of any defendant in that real property, fixtures,  
24 rents, or leases.

25 3. The Deed of Trust is foreclosed and all interest that defendants, and all claims  
26 held by defendants or their successors or assigns, including purchasers and/or holders of

PAGE 2 - STIPULATED GENERAL JUDGMENT OF FORECLOSURE



encumbrances, and arising on or after March 21, 2007, in the Property or its fixtures, rents, and/or leases shall be sold by the sheriff of Multnomah County, Oregon in the manner provided by law and in accordance with the practice of this Court.

4. Defendant is not entitled to a homestead exemption as against plaintiff's Deed of Trust.

5. Pursuant to the Money Award below, Judgment is entered in the principal amount of \$442,495.47, plus escrow advance in the amount of \$14,058.28, plus accumulated late charges in the amount of \$1,179.84, plus accumulated fees in the amount of \$5,297.04, plus interest to September 27, 2013, in the amount of \$22,017.62, and from September 28, 2013, at the rate of 2 percent per annum (\$24.25 per day) until entry of judgment, as well as \$3,544.50 in attorneys' fees, costs, and disbursements, and a Writ of Execution shall issue therefor. *upon proper application*

6. The proceeds of the sale shall be applied first towards the costs of sale, then toward the satisfaction of the judgment amount set forth in the Money Award below, then the surplus, if any, to the clerk of the court to be distributed to any other party or parties as may establish their right and priority thereto.

7. If the proceeds of sale are insufficient to satisfy plaintiff's Money Award in full, plaintiff has no right to recover the deficiency against defendant pursuant to ORS 86.770(2).

8. Plaintiff is permitted to become a bidder and purchaser at the foreclosure sale and may bid up to the aggregate amount of its Money Award, plus interest, from the date of judgment until sale without advancing any cash except money required for the sheriff's fees and costs of sale.

9. The purchaser of the Property at the sheriff's sale is entitled to exclusive and immediate possession of the Property from and after the date of the sale, and is entitled to such remedies as are available at law to secure possession of the Property, and that the Judgment entered herein shall have the same effect as a writ of assistance, if any of the defendants or any

PAGE 3 - STIPULATED GENERAL JUDGMENT OF FORECLOSURE

other party or person shall refuse to surrender possession of the property to the purchaser immediately on the purchaser's demand for possession.

10. Defendant Harold F. Beard, Jr.'s remaining Counterclaims are hereby dismissed with prejudice.

### MONEY AWARD

1. Judgment Creditor: Wells Fargo Bank, N.A.  
c/o Peter D. Hawkes  
Lane Powell PC  
601 SW Second Avenue, Suite 2100  
Portland, OR 97204-3158
2. Judgment Creditor's Attorney: Peter D. Hawkes  
Lane Powell PC  
601 SW Second Avenue, Suite 2100  
Portland, OR 97204-3158  
503.778.2100
3. Judgment Debtor: Harold F. Beard, Jr.  
6014 Southwest View Point Terrace  
Portland, OR 97239  
Year of birth: 1961  
Final four digits of Social Security number: 3771  
Final four digits of driver license number: 1787  
Attorney: None
4. Other Person/Entity Entitled to Portion of Judgment: None
5. Amount of Judgment: \$463,030.63
7. Pre-Judgment Interest: \$22,017.62, plus interest at the rate of \$24.75 per day from September 28, 2013 to entry of judgment.
8. Post judgment Interest: 9 percent simple interest on the sum of the amounts as set forth in paragraphs 5 and 6 above.

PAGE 4 - STIPULATED GENERAL JUDGMENT OF FORECLOSURE

9. Costs, disbursements, and  
attorney fees:

\$3,544.50 on plaintiff's judicial foreclosure claim,  
pursuant to the terms of the Note and Deed of Trust.

DATED this 20<sup>th</sup> day of ~~January~~ <sup>February</sup>, 2014.

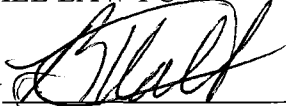
  
Marilyn Litzemberger, Circuit Court Judge

IT IS SO STIPULATED:

LANE POWELL PC

HALL LAW PC

By   
Pilar C. French, OSB No. 962880  
Peter D. Hawkes, OSB No. 071986  
Attorneys for Plaintiff

By   
Brett J. Hall, OSB No. 035694  
Attorneys for Defendant Harold F. Beard, Jr.

DATED: 2/18/14

DATED: 2/10/14

Submitted by:

LANE POWELL PC  
Pilar C. French, OSB No. 962880  
Peter D. Hawkes, OSB No. 071986  
Attorneys for Plaintiff

PAGE 5 - STIPULATED GENERAL JUDGMENT OF FORECLOSURE

**CERTIFICATE OF SERVICE**

I hereby certify that on February 18, 2014, I caused to be served a copy of the foregoing [PROPOSED] STIPULATED GENERAL JUDGMENT OF FORECLOSURE on the following person(s) in the manner indicated below at the following address(es):

Brett J. Hall  
Hall Law PC  
111 SW Columbia Street, Suite 1010  
Portland, OR 97201

- ☐ by CM/ECF
- ☐ by Electronic Mail
- ☐ by Facsimile Transmission
- ☒ by First Class Mail
- ☐ by Hand Delivery
- ☐ by Overnight Delivery

  
Peter D. Hawkes

PAGE 6 - STIPULATED GENERAL JUDGMENT OF FORECLOSURE